

# **EXHIBIT 3**

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Lead Case No. 08-99000-smb

4 - - - - - x

5 Adv. Case No. 10-04390-smb

6 - - - - - x

7 IRVING H. PICARD, TRUSTEE FOR THE LIQUIDATION OF BERNARD L.

8 MADOFF INVESTMENT SECURITIES LLC, AND BERNARD L. MADOFF,

9 Plaintiffs,

10 v.

11 BAM L.P., et al.,

12 Defendants.

13 - - - - - x

14 Adv. Case No. 10-04377-smb

15 - - - - - x

16 IRVING H. PICARD, TRUSTEE FOR THE LIQUIDATION OF BERNARD L.

17 MADOFF INVESTMENT SECURITIES LLC, AND BERNARD L. MADOFF,

18 Plaintiffs,

19 v.

20 NELSON, et al.,

21 Defendants.

22 - - - - - x

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1 Adv. Case No. 08-01789-smb

2 - - - - - x

3 SECURITIES INVESTOR PROTECTION CORPORATION,

4 Plaintiff,

5 v.

6 BERNARD L. MADOFF INVESTMENT SECURITIES, LLC, et al.,

7 Defendants.

8 - - - - - x

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10 United States Bankruptcy Court

11 One Bowling Green

12 New York, NY 10004

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14 November 28, 2018

15 10:03 AM

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21 B E F O R E :

22 HON STUART M. BERNSTEIN

23 U.S. BANKRUPTCY JUDGE

24

25 ECRO: K. SU

1 HEARING re 10-04390-smb Motion for (A) Expedited  
2 Determination Of Motion For A Stay Of Trial Pursuant To Rule  
3 5011(C) Pending Ruling By The District Court On Defendants  
4 Motion To Withdraw The Reference And (B) Granting A Stay.

5

6 HEARING re 10-04390-smb Request For Trial Logistical Matters

7

8 HEARING re 10-04377-smb Conference re Trial (also applies to  
9 Adv. Proc. No. 10-04658)

10

11 HEARING re 08-01789-smb Trustees Twenty-Third Omnibus Motion  
12 to Overrule Objections of Claimants, solely with respect to  
13 claim of FGLS Equity LLC

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25 Transcribed by: Sonya Ledanski Hyde

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21 ALSO PRESENT TELEPHONICALLY:

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23 PATRICK MOHAN

24 DAVID J. SHEEHAN

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1 P R O C E E D I N G S

2 P R O C E E D I N G S

3 CLERK: All rise. Please be seated.

4 THE COURT: Madoff.

5 MR. CREMONA: Good morning, Your Honor. Nicholas  
6 Cremona, Baker Hostetler, appearing on behalf of the  
7 Trustee. I would propose Your Honor to go forward in the  
8 order of the agenda that we filed yesterday, unless Your  
9 Honor has a preference.

10 THE COURT: Well, I didn't see the agenda, but I'm  
11 about to see it.

12 MR. CREMONA: The first matter scheduled is the  
13 motion for stay, pursuant to the order to show cause that  
14 Your Honor entered.

15 THE COURT: Okay. I'll hear that first, Ms.  
16 Neville.

17 MS. NEVILLE: Good morning, Your Honor. Carole  
18 Neville from Dentons on behalf of Michael and Meryl Mann and  
19 Bam L.P.

20 Your Honor, the last time we were before you, and  
21 I think we went down a rabbit hole or a bad path or a  
22 frolic, whatever you want to call it, and I think it's the  
23 same one Judge Daniels went down. That somehow, the  
24 adversary proceeding would result in an allowed claim.

25 The bottom line is, and I'd like to go into a

1 little more deeply, is there's no way that the adversary  
2 gives rise to a claim. There's no claim; it's dead. In  
3 this case, both the net equity and the time-based damage  
4 claim rulings, which really dispose of all of the assertions  
5 in the claim.

6 THE COURT: But you were also contesting, at that  
7 time, the Trustee's computation of the deposits and  
8 withdrawals, even under the net investment method.

9 MS. NEVILLE: But, you know, that was actually  
10 before we got initial disclosures, and I was able to  
11 actually see what the Trustee had and what had been filed.  
12 Because let's remember that these cases go back a very long  
13 time. The net equity decision was before the adversary was  
14 filed, so there were no initial disclosures. We didn't have  
15 the documents from the account. All I had from my client  
16 were his portfolio managing reports and statements.

17 When we got the documents that the Trustee had,  
18 where the client requested money and he got a check or a  
19 wire transfer, we now see that there's no way to contest it.  
20 And vis-a-vis a claim? We're not contesting it. We don't  
21 contest that. That's not an issue at the trial. So what I  
22 have to say about that --

23 THE COURT: Because I asked you this question the  
24 last time. I said, are you withdrawing your claim, and you  
25 said no.



1 MS. NEVILLE: Well, you know something, Your  
2 Honor? Truthfully, the pretrial -- the order, pretrial  
3 process actually was helpful in crystallizing where we  
4 actually are in this case. So I went back and I looked at  
5 things like -- the letter of determination says, you know,  
6 if the Trustee, if the Trustee gets a final order,  
7 unappealable order vis-a-vis this net equity, it is prepared  
8 to adjust the claim; otherwise, the claim is disallowed.  
9 I'm really badly paraphrasing it.

10 THE COURT: But you're talking about the claims  
11 procedure order?

12 MS. NEVILLE: That's in the letter of  
13 determination that came as a part of that.

14 THE COURT: Okay. I understand what the net  
15 equity decision meant. You still had some other objections.

16 MS. NEVILLE: Those went away with time-based  
17 damages. And that, as I recall now --

18 THE COURT: Well, you also -- wait -- you also had  
19 an objection that you can't go back more than two years.

20 MS. NEVILLE: But that's part of the net equity.  
21 The net equity decision was not only money in versus money  
22 out; it was when it began and when it ended.

23 THE COURT: Are you essentially arguing that the  
24 determination of net equity in all of the defenses to that  
25 determination is a separate question from whether or not you

1 received fictitious profits or could assert essentially the  
2 same defenses, that you can't go back more than two years  
3 for fictitious profits or you can't -- or, you know, you can  
4 assert a value defense?

5 MS. NEVILLE: Well, that's where we have to put  
6 that aside for one second. I just want to go back to the  
7 issue of whether there's anything remaining in the claims  
8 allowance.

9 And the second decision, which was the time-based  
10 damages claim, was spurred by something the SEC said in the  
11 net equity argument. And they said, you know, really, that  
12 money in versus money out should be adjusted for the time  
13 value of money. So we went up on that issue, and that issue  
14 nailed finally time-based damages, interest, and all the  
15 other things.

16 So there isn't any way that the adversary can  
17 change the fact that there are final unappealable orders  
18 disposing of all of the issues with respect to allowance of  
19 a claim.

20 Now your question is, is that coterminous with the  
21 defense under 548(c), and our answer to that is no. And I  
22 think --

23 THE COURT: But isn't that a legal question? In  
24 other words, I read the pretrial order this morning. And  
25 aside from the dispute as to whether or not there was a

1 Ponzi scheme, and you also raise the issue, well, maybe this  
2 was property of Madoff personally rather than BLMIS, which  
3 was being transferred, seems to me these are all legal  
4 issues that could be resolved, you know. If you're saying  
5 there is no factual dispute, they can just be resolved on a  
6 motion for summary judgment.

7 MS. NEVILLE: Well, Your Honor, I struggle with  
8 that myself, frankly. Because the reason that I have -- I'm  
9 on a trail path, as opposed to following Mr. Kirby and  
10 Lowry, which I completely agree with on a legal basis, is  
11 because I would not concede that this was a Ponzi scheme.  
12 Now --

13 THE COURT: So what's the affect on your claim if  
14 it's not a Ponzi scheme?

15 MS. NEVILLE: Well, whatever the effect has  
16 nothing on the claim. But what it has is under 548(c)  
17 defense and those are not coterminous. Because if you  
18 consider this, as I do, a securities fraud case and subject  
19 to securities fraud defenses, those defenses come in as  
20 defenses. They have no impact on whether or not I have a  
21 claim against the BLMIS estate.

22 THE COURT: What you're really saying, and this  
23 comes back to the argument whether you can set off your  
24 damage claim against their claim to recovery.

25 MS. NEVILLE: That's called antecedent debt, Your